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UNITED STATES BANKRUPTCY COURT

DISTRICT OF NEVADA

In re

CASH CLOUD, INC.,
dba COIN CLOUD,

Debtor.

Case No. BK-23-10423-mkn

Chapter 11

**DECLARATION OF DANIEL AYALA
IN SUPPORT OF APPLICATION
FOR ORDER AUTHORIZING
RETENTION AND EMPLOYMENT
OF CONWAY BAXTER WILSON
LLP/S.R.L. AS SPECIAL LITIGATION
COUNSEL TO DEBTOR, EFFECTIVE
AS OF THE PETITION DATE**

Hearing Date: OST Pending

Hearing Time: OST Pending

I, Daniel Ayala, declare as follows:

1. I am the Independent Director of Cash Cloud, Inc. dba Coin Cloud ("Debtor"), debtor and debtor in possession in the above-captioned case (the "Chapter 11 Case").

2. Except as otherwise indicated herein, this Declaration is based upon my personal knowledge. I am over the age of 18 and am mentally competent. If called upon to testify, I would testify competently to the facts set forth in this Declaration.

3. I make this Declaration in support of Debtor's *Application for Entry of Order Authorizing Retention and Employment of Conway Baxter Wilson LLP/S.R.L. as Special Litigation Counsel to Debtor, Effective of the Petition Date* (the "Application").¹

4. On August 11, 2022, Debtor initiated litigation by filing a complaint against BitAccess (the "BitAccess Complaint"), entitled *Cash Cloud Inc. v. BitAccess, Inc.*, Case No. CV-22-00089887-0000 (the "BitAccess Action"), in the Superior Court of Justice in Ottawa, Ontario, Canada (the "Ottawa Court"). Debtor has also initiated a companion arbitration proceeding against BitAccess before the Canadian Arbitration Association ("BitAccess Arbitration").

5. Debtor desires to retain CBW to assist representing Debtor in the BitAccess Arbitration in Canada. A true and correct copy of the engagement agreement between Debtor and CBW is attached as **Exhibit 1** to the Caron Verified Statement (the "Engagement Agreement").

6. The BitAccess Action and the BitAccess Arbitration (collectively, the "BitAccess Litigation") concern BitAccess' improper termination of its software services to Debtor—software services that Debtor used to operate its digital currency kiosks. A true and correct copy of the BitAccess Complaint is attached as **Exhibit 2** to the Caron Verified Statement.

7. The BitAccess Action was aimed at obtaining injunctive relief pending the appointment of an arbitral tribunal within the context of the BitAccess Arbitration. An arbitral tribunal (the "Arbitral Tribunal") was appointed in November 2022.

8. Following the Petition Date, there were ongoing negotiations between the Debtor and the Official Committee of the Unsecured Creditors (the "Committee") with respect to whether the Debtor should make the Arbitral Deposits to enable the BitAccess Arbitration to proceed. During these negotiations, the Debtor did not move forward to apply for CBW's employment, because it was uncertain whether the BitAccess Arbitration would proceed.

9. Because the BitAccess Arbitration involves complex issues and impending deadlines, and their outcome will have a significant impact on Debtor's estate, Debtor believes that its

¹ Capitalized terms not defined herein shall have the meanings assigned to them in the Application.

1 representation by CBW as its special litigation counsel in the BitAccess Arbitration is in the best
2 interest of Debtor and the estate.

3 10. CBW's services have provided a significant benefit to the estate since the Petition
4 Date. In this regard, CBW acted to preserve the rights of the estate in the BitAccess Arbitration,
5 which is governed by Ontario law. CBW has further advanced the arbitration forward post-petition
6 in its pre-trial stages. Furthermore, the prosecution and/or settlement of the BitAccess Arbitration
7 may result in significant value to the estate. The compensation sought by CBW of its post-petition
8 services is reflective of a reasonable value of the services that CBW provided to the estate.

9 11. A satisfactory explanation for the failure to obtain prior judicial approval exists. CBW
10 is foreign counsel in an arbitration under Ontario law and its attorneys are not familiar with the
11 bankruptcy law of the United States. In this regard, the Debtor has not sought judicial recognition of
12 the Chapter 11 proceeding in Canada. Furthermore, the Debtor did not move forward with CBW's
13 employment application while there were ongoing negotiations with the Committee with respect to
14 whether the Debtor should make the Arbitral Deposits to permit the BitAccess Arbitration to proceed.
15 Following the Committee's approval of the Arbitral Deposits, counsel for the Debtor communicated
16 the employment requirements to CBW. There is no prejudice arising from the lack of prior approval
17 of CBW's employment.

18 12. Debtor selected CBW because of its excellent qualifications, its reasonable fee
19 structure, and its prior relationship with Debtor in dealing with the BitAccess Litigation.

20 13. CBW's services will not be duplicative of any other professionals providing services
21 to Debtor.

22 14. CBW is well qualified to serve as Special Counsel to Debtor. CBW is a Canadian
23 law firm specializing in litigation. Attorneys at CBW are experienced in representing companies in
24 all manner of complex commercial litigation, including before arbitral tribunals and all levels of
25 court in Canada. Mr. Thomas Conway and Mr. Kevin Caron of CBW will have carriage of this
26 matter. They are both partners at CBW. Mr. Thomas Conway has in excess of 35 years of complex
27 commercial litigation experience and Mr. Kevin Caron has in excess of 7 years of complex
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1 commercial litigation experience. The combined experience of Mr. Conway and Mr. Caron makes
2 CBW well suited to represent Debtor in the BitAccess Arbitration in Canada.

3 15. Accordingly, Debtor respectfully submits that the employment and retention of CBW
4 is in the best interests of Debtor and its estate.

5 16. Debtor proposes to employ CBW as special litigation counsel to Debtor for the
6 BitAccess Arbitration. Specifically, Debtor anticipates CBW will provide counsel on the various
7 Canadian statutory and common law issues raised in the BitAccess Arbitration. This includes all
8 aspects of discovery, pre-trial motion practice, trial/hearings, and post-trial services, if necessary (the
9 “Services”).

10 17. Based on the foregoing, CBW is well-qualified to perform the Services and legally
11 represent Debtor in the BitAccess Arbitration, specifically with respect to CBW’s extensive
12 experience of complex commercial litigation matters.

13 18. The scope of CBW’s Services has been set forth in the Engagement Agreement
14 executed by both CBW and Debtor.

15 19. Debtor shall compensate CBW for the Services rendered to Debtor. Pursuant to the
16 Engagement Agreement, CBW will be paid an hourly rate. The amount of compensation to be paid
17 to CBW by Debtor for the Services rendered will fluctuate depending on the attorney working on the
18 matter. Generally, CBW’s rates range from \$300 to \$750 Canadian Dollars per hour. Mr. Caron’s
19 rate for this matter is \$450 Canadian Dollars per hour and he will be the primary attorney working
20 on this matter from CBW.

21 20. CBW shall also seek reimbursement for the expenses and costs incurred on Debtor’s
22 behalf in connection with the BitAccess Arbitration, to the maximum amount permitted by Canadian
23 law.

24 21. Prepetition, Debtor provided CBW with a retainer, of which \$59,104.59 Canadian
25 Dollars was remaining on the Petition Date (the “Retainer”). CBW deposited the Retainer in its trust
26 account. CBW will apply the Retainer and the Surplus to any outstanding and overdue balances
27 owing pursuant to the interim compensation procedures set forth in this Court’s *Order Granting*
28 *Debtor’s Motion Pursuant to 11 U.S.C. §§ 105(a) and 331, And Fed. R. Bankr. P. 2016, Authorizing*

1 *and Establishing Procedures for Interim Compensation and Reimbursement of Expenses of*
2 *Professionals* [ECF No. 321]. At the end of CBW's representation, it will apply the remaining
3 Retainer and Surplus (if any) to any outstanding fees and/or expenses owing that are approved by
4 the Court pursuant to CBW's Final Fee Application and return any unearned funds to Debtor at that
5 time.

6 22. Debtor respectfully submits that the proposed fee arrangement with CBW in
7 accordance with rendering of its Services, and as set forth above and in the Engagement Agreement,
8 is both fair and reasonable in light of: (i) industry practice; (ii) the similarity to market rates both in
9 and out of Chapter 11 proceedings; (iii) CBW's general experience, and in particular with
10 commercial litigation matters, and Canadian law in general; and (iv) the type of work to be performed
11 pursuant to its retention.

12 23. No prior application for the relief requested herein has been made to this Court or any
13 other court.

14 I declare, under penalty of perjury of the laws of the United States of America, that the
15 foregoing statements are true and correct to the best of my knowledge, information and belief.

16 Executed this 6th day of February 2024 in Las Vegas, Nevada.

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18 /s/Daniel Ayala

19 Daniel Ayala
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